

# LOWENSTEIN SANDLER PC

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May 12, 2006

## FEDERAL EXPRESS

Douglas Tomchuk  
Remedial Project Manager  
United States Environmental Protection Agency  
290 Broadway, 19th Floor  
New York, NY 10007-1866

**Re: Response to USEPA Letter of Notice of Potential Liability and  
Request to Perform RI/FS for the Berry's Creek Study Area, Bergen County, NJ  
("The General Notice Letter")**

Dear Mr. Tomchuk:

This firm serves as liaison counsel for certain of the alleged former customers of the Ventron/Velsicol site that received USEPA's General Notice Letter of March 9, 2006 and this letter will serve as the joint good faith response to the General Notice Letter for those alleged former customers identified on Attachment A ("the Attachment A Entities").

The Attachment A Entities need to provide some background to put this response in context. USEPA issued the General Notice Letter to parties allegedly associated with numerous sites in the vicinity of Berry's Creek, including to the Attachment A Entities because they are allegedly associated with the Ventron/Velsicol site. Most of the Attachment A Entities, along with other alleged customers, and Morton International, the owner of the Ventron/Velsicol site, previously engaged in litigation with regard to the costs of remediation of that site. In the litigation, the alleged customers took the position that they had no liability to Morton or, if they did, that their contribution share was de minimis in comparison to the site owners' and operators' equitable contribution share. Many of the Attachment A Entities reached de minimis settlements with Morton in that litigation. Others were unable to settle with Morton, and ultimately agreed with Morton to dismiss the litigation without prejudice.

The General Notice Letter not only resurrects the liability issues the Attachment A Entities previously fought with Morton regarding the Ventron/Velsicol site, but adds allocation issues and complex technical evaluations for the Berry's Creek Study Area. Those Attachment A Entities

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who settled as de minimis in the prior litigation with Morton continue to view themselves as having no liability or, if they have any liability, they are de minimis or de micromis with regard to the Berry's Creek Study Area.<sup>1</sup> And, those Attachment A Entities who were unable to settle the Morton litigation still believe that they have no liability at all or, if they have any liability, they are de minimis contributors to the Berry's Creek Study Area.

Although the Attachment A Entities believe that they either have no liability for the problems being investigated in the Berry's Creek Study Area, or, if they have any liability, that their contribution was minor, they have engaged in good faith discussion with the other recipients of the General Notice Letter and are, nonetheless, prepared in good faith to enter into negotiations to conduct and/or finance jointly a study at the Berry's Creek Study Area. To that end, the Attachment A Entities have engaged the undersigned as liaison counsel and participated with other General Notice Letter recipients in conference calls and meetings regarding technical issues relating to the Berry's Creek Study Area, including USEPA's framework document and organizing to develop a technical response to the General Notice Letter, and group organization and process in general. We will continue to participate in good faith in those negotiations.

In response to the specific questions listed in the General Notice Letter, the customers provide the following:

1. The Attachment A Entities are willing to continue in good faith discussions with the other General Notice Letter recipients and USEPA regarding performing a study of the Berry's Creek Study Area.
2. If some number of the General Notice Letter recipients are able to agree among themselves and with USEPA to conduct or finance a study, it is anticipated that they will hire competent technical consultants to carry out such a study.
3. The General Notice Letter recipients as a whole are believed to have the financial capability to finance a study of the Berry's Creek Study Area.
4. The Attachment A Entities understand that under CERCLA USEPA may be entitled to recovery of certain of its oversight costs. The Attachment A Entities expressly reserve any defenses or other rights they may have as to the recoverability of certain costs, or their entitlement to a reduction, if not elimination, of past costs and/or oversight costs by application of, among other things, USEPA's Orphan Share Policy.

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<sup>1</sup> Among the defenses to liability for some of the Attachment A Entities is the de micromis liability defense available under CERCLA. Attachment A Entities do not waive their entitlement to de micromis treatment by submitting this good faith response letter. Concurrent with, or at some future time, they may submit separate letters to you to present the basis for treating them as de micromis. While the basis for their de micromis defense is being developed or evaluated, they do not wish to be deemed as recalcitrant and, therefore, join in this submission.

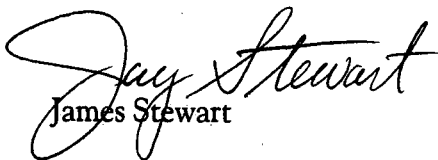


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5. As I am serving as liaison counsel for the Attachment A Entities, you may contact me on their behalf with regard to the General Notice Letter and any subsequent communications. Individual Entities may be represented by specific individuals in the course of these negotiations and we will advise you if they wish to have their individual representatives contacted directly.

This letter is a good faith response on behalf of the Attachment A Entities to the General Notice Letter. The Attachment A Entities do not intend, and no person shall construe, this response to be an admission in law or in fact of any liability, fault or responsibility for the environmental conditions associated with the Berry's Creek Study Area. Moreover, this response letter shall not be construed as an unconditional commitment for the Attachment A Entities to perform or participate in a study of the Berry's Creek Study Area. While the Attachment A Entities are willing to explore whether they can participate as part of a larger group of General Notice Letter recipients in undertaking a study of the Berry's Creek Study Area, the final determination of whether the Attachment A Entities, or any of them, will participate in such a study will depend upon the course of discussions among the General Notice Letter recipients and USEPA of the complex technical and legal issues involved, the provisions of any Consent Decree/Administrative Consent Order and Scope of Work, the extent of participation by other General Notice Letter recipients and other issues.

Very truly yours,

  
James Stewart

JS:ab

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05/12/06 1892360.02

Enclosure

cc: Clay Monroe, Esq. (via Federal Express)



ATTACHMENT A

ENTITIES JOINING IN THE MAY 12 LETTER OF  
LOWENSTEIN SANDLER RESPONDING TO USEPA'S  
BERRY'S CREEK GENERAL NOTICE LETTER

ABB, Inc. (Bailey Controls Co.)  
Alcoa Inc.  
American Cyanamid Company n/k/a Wyeth Holdings Corporation  
BASF Corporation  
Beazer East, Inc.  
Becton, Dickinson and Company  
Belfort Instrument Co.  
Belmont Metals, Inc.  
BOC Group, Inc.  
Canrad, Inc.  
CBS Corporation (f/k/a Viacom Inc. f/k/a Westinghouse Electric Corporation)  
Ciba Speciality Chemicals Corp.  
Cooper Industries  
Cosan Chemical Corp.  
D. F. Goldsmith Chemical & Metal Corp.  
DuPont Co.  
Enovation Graphic Systems, Inc. (for General Notice Letter recipient Phillips & Jacobs, Inc.  
FMC Corp.  
Gillette Company, The (Duracell)  
Mount Union College  
MTA - New York City Transit  
Public Service Electric & Gas Company  
Rutgers University  
Seaforth Mineral & Ore, Inc.  
Spectrum Brands (formerly Rayovac)  
SPX Corp. (for General Signal Corp.)  
Tate & Lyle Americas, Inc., for and on behalf of the company previously known as A. E. Staley  
Manufacturing Co.  
University of Illinois  
University of Minnesota  
Western Michigan University